No. 94-0646

FILED
NOV 4 1994

In The

Supreme Court of the United States

October Term, 1994

MARILYN RITTER, Bankruptcy Trustee, Substitute for TOMMY H. CONDREY,

Petitioner,

vs.

RICHARD K. HOWARD, JR., LEO A. MILLER, JR., HOWARD GIN, INC. and LOUISIANA FIBER CORPORATION,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT HOWARD GIN, INC.

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QUESTIONS PRESENTED

1. Is a "pattern of racketeering activity" established by sporadic, unrelated criminal conduct?

2. Is "continuity" for purposes of a "pattern of racketeering activity" established by predicate acts extending over only a few months?

LIST OF PARTIES

1. Marilyn Ritter, bankruptcy trustee for the Estate of Tommy H. Condrey.

2. Tommy H. Condrey

3. Richard K. Howard, Jr.

4. Howard Gin, Inc.

5. Louisiana Fiber Corp.

6. Leo A. Miller, Jr.

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT HOWARD GIN, INC.

Respondent, Howard Gin, Inc., respectfully requests that the petition for writ of certiorari be denied for the following reasons.

OPINIONS BELOW

The unpublished opinion of the court of appeals was included in the Appendix to the original petition for writ of certiorari. The

unpublished opinion of the district court, which the petition failed to include, is included in the Appendix of Howard Gin, Inc.

STATUTORY PROVISIONS INVOLVED

This Petition for Writ of Certiorari involves the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-68. For purposes of this opposition to petition, the most relevant provision is 18 U.S.C. § 1961(5):

> "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.

STATEMENT OF THE CASE

Tommy Condrey filed an action to recover damages resulting from alleged violations of the federal RICO law by respondents, Howard Gin, Louisiana Fiber Corporation, Richard K. Howard, Jr., and attorney Leo Miller. More specifically, Condrey alleged that the respondents violated § 1962(B) and (C) of the Racketeer Influenced and Corrupt Organization Act (RICO).

On July 22, 1991, the original trial jury found no liability on the part of Howard Gin and Richard Howard, but awarded Condrey $300,000 as against Leo Miller and Louisiana Fiber Corporation. Judge Donald Walter ordered a new trial, and the case was retried in June of 1992. During this second trial, defendant Leo Miller settled with the petitioner, and Richard K. Howard, Jr. had to defend himself in proper person as he could no longer afford legal counsel. The second jury found that all remaining respondents,

Richard K. Howard, Jr., Louisiana Fiber Corporation and Howard Gin had violated the RICO statute and awarded the sum of $700,000 to the petitioner.

On December 2, 1992, Honorable Judge James T. Trimble, Jr. granted Howard Gin's motion for judgment as a matter of law and in the event his decision was vacated or reversed, a new trial. Judge Trimble found that there was absolutely no evidence of Howard Gin being involved in any type of RICO "enterprise". There was also a total lack of evidence as to an alleged pattern of racketeering activity committed by Howard Gin. Judge Trimble ruled that to allow the second jury's decision to stand against Howard Gin would result in a "**gross miscarriage of justice**. This court will not permit that to happen". *Ruling at 10a.* (Emphasis added).

The Fifth Circuit Court of Appeals affirmed the judgment of the District Court. The court did not "decline to follow the reasoning of the District Court" as stated by the petitioner. Instead, the court reasoned that given the complex conceptual and factual difficulties, even assuming Condrey could succeed on all issues on appeal, the trial court properly held that the alleged RICO enterprise did not engage in a "pattern of racketeering activity". Thus, the Fifth Circuit did not find that a RICO enterprise had been proven, only that Condrey certainly did not prove a pattern of racketeering activity.

STATEMENT OF FACTS

Dixie River Cotton Products, Inc. (DRCP) was a short-lived business established by Tommy Condrey (Condrey) and Richard Howard (Howard) in November of 1985. The business was originally formed to buy and sell cottonseed, but it failed by late 1986 after being in business for only slightly over one year. During this time, Condrey and Howard were also involved in numerous other businesses and corporations. Howard Gin (HG) is a business

founded in the 1940's and owned almost solely by its president, Keener Howard, the father of Richard Howard. Howard Gin received harvested cotton from local farmers and "ginned" the crop. Richard Howard served as vice president of the company and "gin manager". Keener Howard, as president of Howard Gin, continued to make the major policy decisions and all major buying and selling decisions as to the cottonseed produced through its ginning processes.

In August 1986, Richard Howard bid on a lease for a building located at the Lake Providence Port Facility. Condrey claimed the lease should have been placed in the name of DRCP instead of Louisiana Fiber Corporation (La. Fiber), one of Richard Howard's other businesses. Howard Gin was not involved in the bidding or leasing process and Richard Howard was not representing Howard Gin in performing these activities. In that same month, August of 1986, Howard purchased some equipment (Walden front end loaders) from a company in Texas. Again, Condrey claimed that the title to the equipment should have been placed in the name of DRCP rather than H & W Warehouse, Inc., another corporation owned by Mr. Howard and his wife. The Fifth Circuit assumed "without deciding" that one act of mail fraud was connected with this transaction.

Just a few months later, DRCP was selling cottonseed to a purchaser, Agway, in November of 1986. The seed was loaded onto barges for shipment to Pennsylvania pursuant to an agreement with Agway. Howard Gin was not involved in any of the transactions between DRCP and Agway, nor did Howard Gin participate in the loading of barges. Due to cash flow problems experienced by DRCP, Richard Howard estimated or projected barge weights of the cottonseed. As a result, Agway later sued DRCP, Condrey and Howard, in federal district court. Condrey was found to have been guilty of fraud in connection with this suit.

The remaining allegations concern a dispute between Farmers Cottonseed and La. Fiber over some "missing cottonseed" during the 1987 harvest period. At that time, DRCP was no longer in business. La. Fiber was storing seed for Farmers Cottonseed, a large purchaser of cottonseed in the area, pursuant to a contractual agreement. Later, when the storage facilities were being emptied, La. Fiber could not account for all of the seed and was legally responsible as the warehouseman. Howard Gin was one of numerous gins in the Northeast Louisiana area selling cottonseed to Farmers. Farmers has never claimed that Howard Gin was responsible for the seed loss and declared that Howard Gin delivered every ton of seed the gin claimed to have sold them. Condrey contends that the weight tickets for the cottonseed reflect deliveries of "non-existent" cottonseed to Farmers, even though Condrey's own company, T & C Trucking, delivered almost one-half of the seed to Farmers.

In regards to the sales to Farmers Cottonseed, Richard Howard testified that all weight tickets were hand delivered. Counsel for Condrey tried to impeach Mr. Howard with his deposition testimony wherein Richard Howard did not admit that any tickets were mailed, but stated that it was only possible that some were. Later, at the first trial, Richard Howard testified that no tickets had been mailed because he had checked with people from Farmers and they told him that the tickets had been delivered by hand. There was not a single statement by any witness or shred of documentary evidence showing that checks were mailed by Farmers Cottonseed to Howard Gin. In fact, the actual testimony was the contrary. Richard Howard testified that when the tickets were hand-delivered to Eudora, Arkansas, the drivers would pick up a check and bring it back.

The Fifth Circuit recognized the following:

> The sufficiency of evidence that Howard or Farmers transacted any of their business by

> mail is hotly disputed. The evidence of the use of the mails is vague at best. For purposes of this appeal, we shall assume that some use was made of the mails.

REASONS FOR DENYING THE WRIT

Under the rules of the Supreme Court of the United States, a review on writ of certiorari is not a matter of right, but of judicial discretion. It is to be granted when special and important reasons exist to do so. Petitioner argues that the Fifth Circuit Court of Appeals' decision conflicts with those of other circuits. However, petitioner's argument is incorrect.

The Fifth Circuit Court of Appeals considered the decision to be so unimportant and of no precedential value that the opinion itself was not published. Further, the Fifth Circuit Court of Appeals correctly applied the "pattern of racketeering activity" requirements of "relationship" and "continuity".

In *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 109 S. Ct. 2893 (1989), the United States Supreme Court held that the term "pattern" requires a showing of relationship between the predicate acts and the threat of continuing activity. *Id.*, 109 S. Ct. at 2900. The Court required that both continuity plus relationship were needed to produce the required pattern.

The relationship aspect focuses on whether the criminal acts "have the same or similar purposes, results, participants, victims or methods of commission or are otherwise inter-related by distinguishing characteristics and are not isolated events". *Id.*, 109 S. Ct. at 2901. The continuity aspect requires a threat of continued racketeering activity. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement. *Id.* 109 S. Ct. at 2902.

The Fifth Circuit found that Condrey established, at most, a few predicate acts — two instances of mail fraud relating to the Port lease, one act of mail fraud related to the Walden loaders, wire fraud concerning sales to Agway, and assumed "some type" of mail fraud with respect to Farmers Cottonseed. The Fifth Circuit found that the predicate acts "allegedly" proved in the case were of two types: (1) those that divested DRCP of property that should have belonged to it, and (2) those that cheated customers of DRCP and its successors. In examining the relationship prong, the appellate court found no relationship between the isolated and sporadic predicate acts. The court also held that the predicate acts did not threaten long term racketeering activity.

The alleged predicate acts were not related, consisting only of sporadic, isolated events. The Port lease and Walden loader transactions occurred almost simultaneously in August of 1986. The court recognized that these allegations related to the divesting DRCP of assets that Condrey claims should have belonged to it. Richard Howard allegedly placed the assets in the names of two companies — H & W Warehouse (the Walden loaders) and La. Fiber (the Port lease). Howard Gin was not involved in any way with these transactions, a fact admitted by Condrey himself at trial. The victim of this so-called scheme was DRCP, not Condrey, and neither episode bears any connection to the later events concerning Agway and Farmers Cottonseed.

The next isolated event occurred about three months later when DRCP was selling cottonseed to one of its contractual buyers, Agway. This involved DRCP in "projecting or estimating" the cottonseed shipped in barges rather than submitting the actual weights to Agway. The customer sued DRCP, Condrey and Howard, with the two men being found personally liable. Condrey himself was found to have committed fraud in regards to the Agway situation. Howard Gin was not involved in this activity either, nor was it sued by Agway. The purpose of the Agway actions

was to alleviate a cash flow problem with DRCP. This event was completely unrelated to the Port lease and Walden loader transactions and was not an attempt to divest DRCP of any of its assets.

The final isolated event occurred during the next Fall harvest period in 1987. The cast of characters had dramatically changed. DRCP had failed and was no longer in business. Farmers Cottonseed was a large buyer of cottonseed from the numerous cotton gins in the Northeast Louisiana area. Earlier in 1987, La. Fiber had entered into a contract with Farmers to store the seed Farmers would purchase from the cotton gins. Later, when the storage facilities were being emptied, La. Fiber could not account for 700 to 1,000 tons of cottonseed and as warehouseman, was liable for the missing seed. Howard Gin had sold cottonseed to Farmers that season, but even Farmers admitted that Howard Gin had delivered all the seed the gin said it did. Despite these facts, Condrey claims that Howard Gin did not deliver all the seed it claimed to have, due to average weights used on truck tickets as well as handwritten weight tickets. At trial, Condrey admitted that neither of these methods would have accounted for the 1,000 ton shortage, and he could not show that any of the tickets were false. Further, Condrey's own trucking company, T & C Trucking, delivered over one-half of the total cottonseed of Howard Gin sold to Farmers in that year. Condrey presented no evidence that the weight tickets were wired to Farmers or that Farmers' payment on the seed was mailed or wired to Howard Gin. Judge Trimble said in his ruling that to hold Howard Gin liable in this situation would be a "gross miscarriage of justice". However, even assuming that these predicate acts might have occurred, they are not connected with the other transactions because they involve different participants — Howard Gin, its drivers, etc. (who had not been involved in any of the other activities), a different victim — Farmers Cottonseed, different methods of commission — use of average weights on trucks and handwritten weight tickets. These

actions were not connected with the alleged acts of Richard Howard to place DRCP assets in the name of corporations owned by him. As found by the Fifth Circuit, these activities were simply sporadic, isolated events, not making up a pattern involving the same or similar people, methods of commission, etc.

Also of importance is that the activities lasted for only a short period of time. The Port lease, Walden loader and Agway events occurred within a brief three-month span in 1986. The last event, Farmers Cottonseed, had no connection with the former incidents involving DRCP. However, all of these transactions occurred within about one year.

This case involves a complex and convoluted set of facts. Both the first jury and Judge Trimble found that Howard Gin was not part of an alleged RICO enterprise and that no pattern of racketeering activity was proven by Condrey. The Fifth Circuit decision does not involve the wrong legal standard being applied, but simply the application of the complex facts to the same "pattern" standard enunciated in *H.J., Inc. v. Northwestern Bell Telephone Co., supra.*

Other circuits have followed a similar approach. *See Feinstein v. Resolution Trust Corporation,* 942 F.2d 34 (1st Cir. 1991); *Kehr Packages, Inc. v. Fidelcor, Inc.,* 926 F.2d 1406, *cert. denied,* 111 S. Ct. 2839 (3rd Cir. 1991); *Eastern Publishing and Advertising, Inc. v. Chesapeake Publishing and Advertising, Inc.,* 895 F.2d 971 (4th Cir. 1989), *cert. denied,* 110 S. Ct. 3274 (1990); *Calcasieu Marine National Bank v. Grant,* 943 F.2d 1453 (5th Cir. 1991); *Newport Ltd. v. Sears Roebuck and Co.,* 941 F.2d 302 (5th Cir. 1991), *cert. denied,* 112 S. Ct. 1175 (1992); *Vild v. Visconsi,* 956 F.2d 560, *cert. denied,* 113 S. Ct. 99 (6th Cir. 1992); *American Eagle Credit Corporation v. Gaskins,* 920 F.2d 352 (6th Cir. 1990); *Hartz v. Freidman,* 919 F.2d 469 (7th Cir. 1990); *Information Exchange Systems, Inc. v. First Bank National Association,* 994 F.2d 478 (8th

Cir. 1993); *Brode v. Cohen,* 966 F.2d 1237 (8th Cir. 1992); *Religious Technology Center v. Wollersheim,* 971 F.2d 364 (9th Cir. 1992); *Boone v. Carlsbad Bank Corporation, Inc.,* 972 F.2d 1545 (10th Cir. 1992).

As a result, this case does not involve any novel issue of federal law or conflict among the circuits. The Fifth Circuit Court of Appeals decision should be upheld by the Honorable United States Supreme Court by denying the petition for writ of certiorari.

CONCLUSION

The Fifth Circuit Court of Appeals was not guilty in applying a restrictive standard to the pattern requirement, but simply applied the complex facts in this situation to the *H.J., Inc. v. Northwestern Bell Telephone Co.* standard being utilized throughout the United States. This case does not involve a conflict among circuits, and was considered so unimportant and of no precedential value by the Fifth Circuit that the opinion was not published. Accordingly, the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A — RULING ON POST TRIAL MOTIONS FILED DECEMBER 2, 1992

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

CIVIL ACTION NO. 89-0953
JUDGE TRIMBLE

TOMMY H. CONDREY

VS.

RICHARD K. HOWARD, JR., ET AL

RULING ON POST-TRIAL MOTIONS

Plaintiff, Tommy Condrey, filed an action to recover damages as a result of alleged violations of federal law by defendants Howard Gin, Inc., Louisiana Fiber Corporation, Richard K. Howard, Jr., and attorney Leo Miller. Mr. Condrey alleges violations of the Racketeer Influenced and Corrupt Organization Act, commonly referred to as RICO. More Specifically, he claims that each defendant violated Sections 1962(b) and (c) of RICO. This case was first tried in 1991, after which trial the judge granted a new trial on the basis of an inconsistent jury verdict. That jury awarded plaintiff $300,000 against Leo Miller and Louisiana Fiber Corporation, but found no liability on the part of Richard Howard or Howard Gin, Inc. The case was retried in June of 1992, and during the course of that trial defendant Leo Miller settled with the plaintiff and all claims against him were dismissed. At the conclusion of the second trial, the jury found, *inter alia*, that

defendants Richard Howard, Louisiana Fiber Corporation, and Howard Gin, Inc. were engaged in a pattern of racketeering activity, such as, mail fraud, wire fraud, or theft of goods in interstate commerce and that said defendants acquired or maintained an interest in, conducted the affairs of, or controlled an enterprise involving also Dixie River Cotton Products, Inc. and Tommy Condrey through the pattern of racketeering activity. The jury Awarded damages in the sum of $700,000.

Pursuant to the jury verdict, judgment was rendered against Richard K. Howard, Jr. (RH), Louisiana Fiber Corporation (LF) and Howard Gin, Inc. (HG) in the sum of $1,950,000, with interest from date of judgment. The amount of the judgment reflected the required trebling of the damages per the RICO statute and deducting the amount of the Miller settlement therefrom. Additionally, the judgment awarded plaintiff $468,460.40, with interest from judgment, as attorney fees.

All defendants have filed motions for judgment notwithstanding the verdict and/or Rule 59(e) amendment to the judgment and/or new trial. As correctly observed by counsel for plaintiff, Rule 50 of the Federal Rules of Civil Procedure now provides for judgment as a matter of law rather than JNOV, but as counsel for plaintiff observes, the criteria for granting the motion are the same.

Judgment as a Matter of Law

FRCP 50, effective since December 1, 1991, permits the court to grant a motion for judgment as a matter of law, after a full hearing, if there is no legally sufficient evidentiary basis for a reasonable jury to have found for the non-moving party. The comments following the rule states plainly that the amendment

"*effects no change in the existing standard.*" The Fifth Circuit in an *en banc* opinion, *Boeing Co. v. Shippman,* 411 F.2d 365 (1969), held that a JNOV is appropriate if, considering all of the evidence and viewing it most favorably to the party opposing the motion, the evidence and inferences from it point so strongly in favor of the motion that reasonable jurors could not have arrived at a contrary verdict. See also, *Gates v. Shell Oil,* 812 F.2d 1509, 1512 (5th Cir. 1987). The issue before the court on the motion for judgment as a matter of law filed by the defendants, therefore, is whether upon application of the *Boeing* standard reasonable jurors could not have arrived at the verdict reached in favor of Tommy Condrey.

Bases for Motion

Howard Gin predicates its motion for judgment as a matter of law on alleged insufficient proof that HG was part of the enterprise; insufficient proof of predicate acts and a pattern of racketeering activity as required by the statute; insufficient proof of a Section 1962(b) violation; and insufficient evidence of damages. Mr. Howard and Louisiana Fiber claim that no enterprise or pattern of racketeering was established and alternatively seek a remittitur, which in effect is an attack upon the amount of damages awarded. In disposing of the motions for judgment as a matter of law, the court will discuss the issues of HG's involvement, "*the enterprise*" issue, and proof of a "*pattern of racketeering activity.*"

Howard Gin as a Part of the Enterprise

The court's appreciation of the evidence is that Howard Gin, Inc. is or was a corporation almost wholly owned by Keener Howard, Richard Howard's father. This corporation owned and operated a cotton gin. In the course of its operation, it, among other suppliers, sold cottonseed to a corporation formed by plaintiff

Appendix A

Tommy Condrey and Richard Howard known as Dixie River Cotton Products, Inc. There is no evidence of which this court is aware that lends the slightest support to this established concern ever entering into any kind of relationship with Mr. Condrey, Mr. Richard Howard individually, or any of their myriad corporations (Dixie River Cotton Products, Inc. owned jointly and the others owned individually) except that of vendor-vendee or vendor-broker. HG had been in the ginning operation for many years prior to the formation of Dixie River Cotton Products, Inc. (DRCP) in November of 1985. Mr. Keener Howard had permitted Richard to function as manager of the gin since sometime in the 1960's, as the court recalls. In addition to his job, Richard Howard conducted some farming activities of his own and other activities through a number of corporations, including H&W Warehouse and Louisiana Fiber. There is no evidence that HG had any interest in these other ventures of RH. Likewise, Mr. Condrey, before and after participating in the formation of DRCP, owned and operated T&C Trucking, Dixie River Electric Co. and Dixie River Dog Feed. He also owned some interest in Joe's Bayou Gin, where he had at one time worked. Counsel for plaintiff attempts, by argument in brief, to pop a hat with the HG label or the LF label on Richard Howard's head as it suits his purposes. Both Richard Howard and Tommy Condrey had about as many heads as a hydra at a guillotine party. This court defies anyone to determine, from the evidence, which hat adorned which head at any given time material to the issues in this case.

Plaintiff's counsel repeatedly makes the statement in brief that whenever RH acted in a manner that would apparently inure to the benefit of HG, he was acting with binding authority from HG. That is a gross over-simplification of the issue. This court does agree with the argument of counsel for Howard Gin, Inc. that there is a serious misstatement of the law in the court's instruction when,

after stating the correct law that corporations may be liable for acts of the officials if they are related to and committed within the scope of employment, inure to the benefit of the corporation, and are acquiesced in by the corporation, then tells the jury point-blank:

> *"If the individual wrongdoers are high ranking officials of a corporation, then the individual's wrongdoing is the same as the wrongdoing of a corporation and the corporation will be responsible for the acts of the individual."*

The above cited language is not correct law. The undersigned recalls no objection made to the instruction at the time, and defense counsel does not contend that any such objection was made to the undersigned. This case was initially tried before another judge, and counsel apparently agreed that an objection was made to that judge as to the giving of this instruction. There was an agreement among counsel that all objections made at the earlier proceeding, including objections to the instructions, would be deemed made at the new trial. This writer had no access to the earlier objections and was unaware of them, and simply did not take appropriate note of what this court feels to be an incorrect and misleading statement of the law.

There is no testimony in this case, nor is there documentary proof, to show that the corporation, Howard Gin, Inc., ever entered into any kind of association with DRCP, Tommy Condrey, or Richard Howard individually. No resolution of the Board of Directors authorized such. No resolution gave even the president, Keener Howard, much less the gin manager, Richard Howard, any authority to enter into any such association. The functions of the various entities allegedly a part of this association were entirely different. Howard Gin, Inc. was no different from other gins who

sold to DRCP. It was simply that, a seller of cottonseed. When Richard Howard decided that he wanted to go into business with Tommy Condrey, he never suggested that Howard Gin, Inc. be a stockholder in DRCP. He testified that all of his actions as they pertained to the operation of DRCP were in no way connected with or related to his employment as gin manager for HG. Keener Howard testified to the same. Plaintiff's counsel points to the fact that HG received payments from DRCP. It certainly did, as vendor of seed. So did Condrey's corporation, T&C Trucking, as conveyor of seed, but there is no contention that T&C Trucking was part of the alleged enterprise.

Plaintiff's counsel suggests that another reason HG should be considered a part of the enterprise was the fact it rented and later sold a warehouse building to the cottonseed business. This established nothing more than a lessor-lessee and vendor-vendee relationship with respect to the warehouse. It is noted that not long after DRCP's formation, Condrey performed renovation work on HG's building which DRCP was at that time renting. Condrey claimed some $36,000 for this work. When he asked RH about payment from HG for the renovation, RH was quick to tell him that he would have to take that up with Keener Howard, the major owner and president of HG. Keener Howard refused to pay for the renovations, which he had not authorized or contracted for on behalf of HG, but did agree that Condrey could operate his other corporations out of part of the office space which had been created by the renovations. Mr. Condrey had no reason to wonder about who ran HG and who had authority to bind it. He had no reason to believe that HG was part of any ongoing association, enterprise, or entity in which he was involved. Mr. Condrey had been a gin manager himself. Neither he nor anyone else testified that customarily gin managers had authority to bind companies by whom they were employed to any type of association, entity, or enterprise.

Appendix A

Even if the objectionable language in the instructions recited hereinabove were a correct statement of the law, the evidence does not establish a basis of liability on the part of HG. A gin manager *per se,* all that RH was shown to be in his relationship with HG is not a high ranking corporate official. Even if he were, he could not bind the corporation, simply by virtue of his position, because of any illegal act which he may have committed. Counsel for plaintiff cites *Harrison v. Dean Witter Reynolds, Inc.*, 695 F. Supp. 959, a district court case from the Northern District of Illinois, as authority for the language from the instructions quoted hereinabove. A reading of that case shows that the language was indeed taken practically verbatim from this opinion. The author cited three cases in support of this statement. The first was *D&S Auto Parts, Inc. v. Schwartz,* 838 F.2d 964 (7th Cir. 1988). *D&S* specifically rejected the application of the doctrine of *respondeat superior* in civil RICO cases. The language alluded to by the author of the *Harrison* opinion appears in footnote 5 of *D&S* and clearly shows that it was referring to the case of *Schofield v. First Commodity Corp. of Boston,* 793 F.2d 28 (1st Cir. 1986) and stated that this language was only that used in argument by the plaintiff in the *Schofield* case. The *Schofield* court did not adopt that argument. The *Schofield* opinion itself makes it clear that this language was only a statement of plaintiff's position, not the position of the court, as follows:

> "*Appellant apparently concedes that a wholesale adoption of the respondeat superior concept would conflict with the primary thrust of Section 1962(c). In order to conform to Congress' obvious desire to insulate legitimate businesses from liability she suggests that we could adopt a modified version of vicarious liability, perhaps requiring some level of*

> *scienter before imposing liability. For example, respondeat superior could be limited to acts of high corporate officials, whose actions may be deemed corporate policy, and thus would reflect corporate intent."*

The court went on to observe that such an argument would be one for direct liability rather than vicarious liability, but never did it adopt the language or suggest in any way that actions of corporate officials which are in no way known to or sanctioned by the corporation itself would create either direct or vicarious liability in the corporation. The third case cited by the *Harrison* author, *United States v. DiCaro,* 772 F.2d 1314 (7th Cir. 1985) does not stand for the proposition enunciated. It held that the criminal defendant, DiCaro, could not be held liable under RICO Section 1962(c) where he was both the RICO person and the enterprise as charged in the indictment and as explained in the jury instructions. In summary, this writer is unaware of any reliable legal authority that a corporate officer, solely by virtue of his title, can bind the corporation by committing illegal acts without the knowledge of the corporation and without any authority whatsoever conferred by the corporation.

It appears well settled that vicarious liability through employee conduct cannot provide a basis for civil RICO actions. In *First National Bank of Louisville v. Lustig,* 727 F. Supp. 276 (E.D. La. 1989), Judge Livaudis held specifically that *respondeat superior* could *never* be the basis of liability for a civil RICO suit (at page 280). Further, at page 279, Judge Livaudis stated "*a corporation that is only the passive instrumentality of an employee's wrongdoing cannot be held liable as a principal."*

Plaintiff's counsel, at page 9 of their original memorandum in

opposition to the instant motions, states:

> *"It was after the November 17 bogus ticket and the corresponding Agway wire money transfer that R. Howard wrote the $64,187 in unauthorized checks to Howard Gin, demonstrating that R. Howard was acting on behalf of Howard Gin when he committed wire fraud."* (emphasis supplied)

This is another of counsel's non sequiturs. This conduct on the part of the gin manager in no way presumes or even infers knowledge on behalf of the employer. Mr. Howard and Mr. Condrey both had check writing authority on DRCP, and both wielded that authority with reckless abandon, as the evidence clearly illustrates. The fact that Howard Gin may have benefitted from illegal activities of RH likewise does not ascribe knowledge or liability to HG. As observed by the D&S court, cited *supra*:

> *"***Appellants contend that Saul intended to benefit his employer, as his scheme included payment to Walter although Walter did receive the funds and presumably used them in its operations, it did so unwittingly. Walter was a victim, not a perpetrator. Saul stole the parts from Walter from his own profit in selling them to third parties, leaving Walter with falsified invoices, which, although paid, subjected Walter to suit as soon as D&S discovered the scheme. Sending invoices to D&S cannot be characterized as an action intended to benefit Walter, Saul more likely intended to benefit himself by covering up his theft."*

Even if RH committed the acts of short weighing of which the jury in this case apparently found him guilty without any evidence whatsoever that the officers and/or directors of HG had knowledge of same, the corporation could not be found liable. Perhaps, if such short weighing did occur, RH was attempting to achieve a bonus from HG or, since it was a family owned corporation, improve its finances with the expectation that it would ultimately inure to his benefit when his father relinquished control and perhaps even ownership of that corporation.

It suffices to say that to hold Howard Gin, Inc. liable on the basis of the evidence in this case would result in a gross miscarriage of justice. This court will not permit that to happen.

The "Enterprise" Issue

The jury, in responding to the interrogatories, found that Dixie River Cotton Products, Inc., Tommy Condrey, Richard Howard, Louisiana Fiber Corporation, and Howard Gin, Inc. were an ongoing enterprise that functioned as a continuing unit with a common purpose which had an effect on interstate commerce. 18 U.S.C. § 1961(4) defines an enterprise as including "*any individual, partnership, corporation, or association or other legal entity, and any union or group of individuals associated in fact although not a legal entity.*" The theory upon which plaintiff proceeded in its approach to this issue was that the individuals and corporations mentioned in the interrogatory constituted an "*association in fact*" to form the enterprise.

In this case, two individuals, Tommy Condrey and Richard Howard, agreed in November of 1985, to form a corporation, Dixie River Cotton Products, Inc., for the purpose of buying and selling and/or brokering cottonseed. As indicated above, both of these

individuals owned various corporations or controlling interests in them which operated as separate entities. The record in this case is devoid of any evidence, direct or inferential, from which one could conclude that the two individuals and the corporations mentioned in the interrogatory functioned as a single enterprise. Each maintained its own separate identity and operated in its own sphere of activity. The fact that Richard Howard, as owner of Louisiana Fiber, chose to place a lease contract or title to a warehouse, perhaps fraudulently so, in the name of Louisiana Fiber does not make Louisiana Fiber part of any "*association*" as it has been defined in the jurisprudence. The Fifth Circuit recently addressed this issue, stating that an association in fact enterprise *"(1) must have an existence separate and apart from the pattern of racketeering, (2) must be an ongoing organization and (3) its members must function as a continuing unit as shown by a hierarchical or consensual decision making structure."* *Calcasieu Marine National Bank v. Grant,* 943 F.2d 1453, at 1461 (5th Cir. 1991). In this case, there was no "*hierarchical or consensual decision making structure*" established by the evidence. The evidence clearly demonstrated that what emerged from the combined talents(?) of the two individuals was a corporation, DRCP, which did business with the corporations owned by both individuals. T&C Trucking, owned by Condrey, hauled seed and was paid by DRCP for that service. Howard Gin, managed but not owned by RH, sold cottonseed to or through DRCP. Louisiana Fiber, which the jury apparently felt had acquired the port lease by fraud on the part of Richard Howard, operated in its own sphere of activity. There is nothing in the record to show that Tommy Condrey had any decision making authority as to Louisiana Fiber or Howard Gin, nor is there evidence that Richard Howard could have made any decisions as to T&C Trucking or Dixie River Dog Feed.

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From the evidence adduced at trial, this court finds no proof of a hierarchical or consensual decision making structure that included anyone other than Dixie River Cotton Products, Inc. and the two owners, Tommy Condrey and Richard Howard. Assuming that Richard Howard committed a pattern of predicate acts, he as an officer and owner of the corporation would not be distinct from the corporation itself so as to form an association in fact enterprise. See *Old Time Enterprises v. International Coffee Corp.*, 862 F.2d 1213 (5th Cir. 1989); *Parker & Parsley Petroleum v. Dresser Industries*, 972 F.2d 580 (5th Cir. 1992); *Data Controls North v. Financial Corporation of America*, 688 F. Supp. 1047 (D. Md. 1988); and *Pell v. Weinstein*, 759 F. Supp. 1107 (M.D. Pa. 1991). Likewise, the corporation (DRCP) could not be both the enterprise and the RICO perpetrator. The association of DRCP, Condrey, and Howard cannot be a RICO enterprise. See, *Parker & Parsley Petroleum, supra,* and *Bishop v. Corbitt Marine Ways*, 802 F.2d 122 (5th Cir. 1986).

The evidence in this case does not support the jury's finding as to the composition of the enterprise, nor will the evidence support any other composition of an enterprise actionable under RICO.

The Issue of "Pattern of Racketeering Activity"

An analysis of this ingredient of the RICO elements must begin with a review of the Supreme Court decision in *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 109 S. Ct. 2893 (1989). Therein, the Court made it clear that a "*pattern*" as envisioned by the statute is not established by merely proving two predicate acts within the ten-year period. The Court observed that "*the mere fact that there are a number of predicates is no guarantee that they fall into any arrangement or order*", but stated that it is "*not the number of predicate acts but the relationship that they*

bear to each other or to some external organizing principle that renders them 'ordered' or 'arranged'." Additionally, the Court emphasized that *"pattern"* under RICO requires not only relationship between the predicates, but the threat of continuity. Justice Brennan, speaking for the Court, instructed:

> *"RICO's legislative history reveals Congress' intent that to prove a pattern of racketeering activity a plaintiff or prosecutor must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity."*

In order to satisfy the relationship requirement, the Court stated that *"criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events."*

As to the second prong of the *"pattern"* test, the Court stated that what a plaintiff or prosecutor must prove *"is continuity of racketeering activity, or its threat, simpliciter."* The Court proceeded by observing that *"continuity"* is both a closed-and open-ended concept. In the former, it referred to a closed period of repeated conduct, and in the latter, to past conduct that *"by its nature projects into the future with a threat of repetition."* The Court stated:

> *"A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time.*

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> *Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct."*

Following *HJ's* precepts, Judge Arceneaux in the Eastern District of Louisiana held that alleged acts of mail and wire fraud extending over a 10-month period from July, 1985 until May, 1986 did not, as a matter of law, supply a continuing threat sufficient to constitute a closed-ended RICO pattern. He likewise found, under the facts of that case as alleged, that no open-ended pattern could be established. See *Newport Ltd. v. Sears Roebuck & Co.*, 739 F.Supp. 1078 (1990). The Fifth Circuit Court of Appeals adopted Judge Arceneaux's holding as to the RICO issues. *Newport Ltd. v. Sears Roebuck & Co.*, 941 F.2d 302, at 304 (5th Cir. 1991).

As predicate acts of racketeering, plaintiff first points to a scheme to steal assets. He first discusses the fact that Mr. Condrey performed renovations to the hycoloader building belonging to HG at a cost of $36,000, for which he was not reimbursed. This has no relevance to this lawsuit whatsoever. 18 U.S.C. § 1961 lists specific state and federal crimes which will be deemed "*racketeering activity*" under the RICO statutes. Nonpayment of a debt such as this, whether legitimate or not, is not listed. He next points to the fact that the lease of a warehouse from the Port Authority of Lake Providence was fraudulently taken in the name of Louisiana Fiber Corporation, d/b/a Dixie River Cottonseed Products, when it should have been leased to DRCP. This was accomplished, according to plaintiff, through the actions of RH and his attorney, Leo Miller. The lease was signed on August 1, 1986. Following correspondence with the State of Louisiana, on August 27, 1987, the lease was taken in the name of simply Louisiana Fiber Corporation.

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There can be no argument that taking the lease in the name of the wrong corporation, however fraught with fraud, fell within the definition of any listed racketeering activity. The argument is that sending the letters to the State of Louisiana and the East Carroll Parish Police Jury with wrong names for the proposed lessee constituted mail fraud. The court will assume that as being established; however, the court further finds that this theft of assets through mail fraud would have been accomplished as of August 1, 1986 when the Port lease was taken in the name of Louisiana Fiber, d/b/a Dixie River Cottonseed Products. When the Port lease was later changed to the name of simply Louisiana Fiber Corporation, that would not have been a new transaction because Louisiana Fiber had already acquired the lease over a year earlier and could not steal the lease from itself. The court finds that from the evidence, the jury could have concluded that an act of fraud culminating in placing of the lease of the warehouse from the Lake Providence Port Authority was accomplished through the sending of letters in July, 1986, misrepresenting the name of the lessee and resulting in a lease to Louisiana Fiber, d/b/a Dixie River Cottonseed Products, rather than DRCP, on August 1, 1986. The court finds this would constitute one predicate act established by the plaintiff.

Also in August of 1986, RH and plaintiff agreed to buy the hycoloader building from HG. There was evidence from which the jury could, and apparently did, conclude that RH and Leo Miller fraudulently had title placed in the name of Richard and Judy Howard in August of 1986, rather than in the name of DRCP, which should have been the rightful purchaser. In 1987, the Howards transferred title to the property to Louisiana Fiber. As to this conduct, there is no allegation that mail or wire fraud ever took place. It is not a predicate act as defined by the statute, and the court finds that it could not have been considered part of a pattern of racketeering activity.

Again, in August of 1986, plaintiff and RH agreed to purchase three Walden loaders from R.W. Armstrong in Harlingen, Texas. RH and attorney Leo Miller, in connection with this purchase caused the transfer documents to reflect the new owner to be H&W Warehouse, one of RH's corporations, rather than DRCP. As with the previous conduct discussed herein, the taking of title to the loaders in the wrong name, though fraudulent, is not proscribed by the RICO statutes. Counsel states that "*Miller participated in interstate telephone conversations concerning these documents.*" Mail and wire fraud must be alleged and proved with particularity. See *Haroco, Inc. v. American National Bank,* 747 F.2d 384 (7th Cir. 1984) (where fraud in the basis for a RICO claim, Rule 9(b) applies), aff'd, 473 U.S. 606, 105 S.Ct. 3291 (1985). Counsel does not indicate in any way when the conversations took place, and more critically, what, if any, fraudulent representations were made during the course of the conversations. The most that can be said for this transaction, as it relates to RICO, is that the sending of the false documents through the U.S. Mail would constitute mail fraud, and for purposes of this opinion, the court is so assuming. At some later date, the court believes in 1987, these loaders were transferred to Farmers Cottonseed as part of a settlement of a dispute concerning cottonseed shortages. As in the case of the Port lease, the court does not consider this to be a separate act but all part of the same conduct of taking title to the loaders in a name other than DRCP, for whom the loaders were intended.

In addition to the "*scheme to steal assets*", plaintiff maintains that RH successfully schemed to steal cottonseed. The jury apparently believed that. The method by which plaintiff claims RH accomplished this in 1985 was by simply overstating the amount of cottonseed in the warehouse and having Condrey issue checks to Howard Gin as seed was sold. In the fall of 1986, when the warehouse ran out of seed and there were unfilled orders, Mr.

Condrey simply deduced that RH had overstated the amount of the seed. In 1986 and 1987, plaintiff claims that RH falsified truck weight tickets so they reflected more seed being brought to the DRCP warehouses than the trucks were actually carrying. Not one truck driver from Howard Gin, which was just one of the seed suppliers among a number of others, testified that they knew anything about any false tickets. In fact, every such driver, one of whom was plaintiff's brother, testified that they were not aware of any false tickets. The "*proof*" of short weighing attributable to RH, because he was the manager of HG, stems from testimony to the effect that the seed factor from HG was overstated to be 1.7 rather than 1.5, and that with a 1.5 seed factor HG could not possibly have delivered from its gin the amount of seed that it claimed to have delivered to DRCP in 1986 and 1987. This tenuous evidence apparently was sufficient for the jury. It is quite involved, and the court, for the purposes of this opinion, will simply assume that the evidence was sufficient to substantiate the jury's apparent finding that such "*short weighing*" did occur. This would not in any way fit the definition of a racketeering activity as defined by the statute. At page 25 of his brief, counsel for plaintiff as much as admits that overstating the amount of seed delivered by trucks moving intrastate from HG to DRCP did not violate 18 U.S.C. § 659 (felonious theft from interstate shipment). That statute proscribes any unlawful taking or obtaining from a railroad car, wagon, motor truck, or other vehicle, or from any tank or storage facility, station house, platform or depot, or from any vessel or wharf, with intent to convert to his own use, any goods or chattel moving in or which are a part of or which constitute an interstate or foreign shipment of freight. As counsel for HG points out in brief, in *United States v. Bizanowicz*, 745 F.2d 120, 122 (1st Cir. 1984), the elements of this offense are defined in the following language:

"*An essential element of the crime of*

> *embezzling or stealing goods under 18 U.S.C. § 659. . . is that such goods (1) be moving as an interstate shipment, (2) be part of an interstate shipment, or (3) constitute an interstate shipment."*

There was no interstate aspect to the shipment of cottonseed from HG to DRCP. Further, the overstating of the truck loads would not amount to the taking of tangible goods or chattel from any shipment. These weight tickets were not mailed, and the court can find no basis whatsoever for any claim of mail fraud or wire fraud connected with them. Nothing connected with the "*short weighing*" in cottonseed deliveries from HG to DRCP constituted a predicate act under RICO.

In November of 1986, RH was in charge of loading a barge with cottonseed destined for a New York customer by the name of Agway, Inc. RH sent, by Federal Express, to Agway a grossly exaggerated statement of the amount of cottonseed that he had loaded on the barge. In response to this misrepresentation, Agway wired $50,000 for cottonseed that it did not receive. The court will conclude that although the false weight tickets to Agway sent by Federal Express did not constitute mail fraud since the U.S. Mail was not utilized, it was not only foreseeable but expected that Agway would wire funds in response to these false representations. Therefore, the predicate offense of wire fraud occurred because RH caused the wire service to be used by means of false or fraudulent pretenses. Counsel for plaintiff argues that RH committed mail fraud when he mailed false weight tickets to the Farmers Cottonseed office in Eudora, Arkansas. His argument in that connection is as follows:

> *"Mail fraud occurred when fraudulent weight*

tickets were mailed to the Farmers Cottonseed office in Eudora, Arkansas throughout 1987 and 1988. Although many tickets were hand-delivered, Richard Howard admitted in deposition that some were mailed. He later retracted this statement at trial but was impeached by his deposition testimony."

The law simply does not support plaintiff's position as above stated. As indicated earlier, mail and wire fraud must be alleged and proven with particularity. There is nothing to show that all weight tickets were false or fraudulent, and certainly the evidence does not establish which, if any, were. Whether any particular fraudulent weigh ticket caused money to be wired by Farmers Cottonseed in response thereto was not established by evidence. As far as the mailing of fraudulent tickets, that was not established either. Even if he admitted at the trial that some tickets were mailed, only if false tickets were mailed would mail fraud be established. As a matter of fact, the evidence is not sufficient to establish the mailing of any tickets by RH to Farmers Cottonseed. Mr. Howard was the only witness who addressed this issue, and he testified that he could not say whether any were mailed or not. Counsel for plaintiff indicates that he established the fact that some were by using his prior deposition to impeach him. Prior inconsistent statements by a witness can be considered for impeachment purposes only, and not to prove the truth of the matters asserted therein. See *New Orleans Saints v. Griesedieck*, 612 F. Supp. 59 (D.C. La. 1985), aff'd, 790 F.2d 1249, and *Dowell, Inc. v. Jowers*, 166 F.2d 214 (5th Cir. 1948), cert. denied, 68 S. Ct. 1346, 334 U.S. 832.

Based upon the foregoing discussion, this court concludes that the plaintiff, as a matter of law, has established only three predicate

acts as defined by RICO. One was the mailing of the letter misrepresenting the name of the lessee in connection with the Port lease. Another was the mailing of the false title documents in connection with the purchase of the Walden loaders. Both of these events took place in August of 1986. The third was the fraudulent misrepresentation of cottonseed loaded on the Agway barge, which caused Agway to wire money to DRCP to which DRCP was not entitled. That occurred in November of 1986.

Based upon the law as expressed in *H.J. Inc.* and *Newport, Ltd., supra*, this court finds that there was not sufficient closed-ended or open-ended continuity to constitute a "*pattern of racketeering activity*" contemplated by RICO. A closed-ended period of only four months, during which only three predicate acts were committed would not provide the necessary element of continuity. The court observes that only two of the predicate acts could be called "*related*", both of those in August of 1986, with the placing of assets in names other than DRCP. The Agway transaction was not related to those two incidents.

As to open-ended continuity, this relationship between Condrey and Howard completely ended in 1988, and the conduct was not of such nature that it would project into the future with threat of repetition.

THE MATTER OF A NEW TRIAL

Rule 50(c)(1) directs the court to rule on the alternative motions for a new trial if judgment as a matter of law is granted. This is to be done by determining whether the motions should be granted if this court's judgment is later vacated or reversed. In compliance with this direction, this court holds that a new trial should be granted in this case to serve the ends of justice.

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The reasons supporting a new trial are two-fold. First, the court feels strongly that the jury instruction complained of to the effect that if an individual wrongdoer is a high ranking official of the corporation, then his wrongdoing is the same as the wrongdoing of the corporation, even in the context of the other instructions given, was grossly misleading and erroneous. There is some confusion as to whether a timely objection was made. Counsel for plaintiff cites *Moore's Federal Rules,* Section 51.04, as standing for the proposition that in the absence of a timely objection, a new trial should be ordered only on the grounds of plain or fundamental error. The party moving for the new trial must demonstrate (1) that the instructions, taken as a whole, gave an incorrect statement of the law; and (2) the instructions were probably responsible for an incorrect verdict. Even taking that as the strict standard in this case, given the evidence which was highly inflammatory as against Richard Howard individually, this court feels that the jury in all likelihood relied on just this misstatement of the law in order to find Howard Gin liable. Actually, the same rule would apply as far as Louisiana Fiber Corporation is concerned. Evidence was not detailed as to the make-up of that corporation and specifically whether it was properly run as a corporation with a board of directors making decisions and directing the president, Richard Howard, in his activities. The claims against the defendants are so interwoven that the court feels that a new trial as to all parties would be appropriate.

The other reason for the new trial relates to damages. Both parties have complained that the jury's damages were excessive. In view of the court's ruling that the short weighing was not a predicate act, that complaint is well-taken. Without any doubt, as demonstrated from the amount of time spent in the presentation of evidence and from plaintiff's brief in opposition to post-trial motions, plaintiff's contention is that the largest single factor in the

downfall of DRCP with the resultant alleged losses to himself personally was the alleged short weighing of cottonseed. This court has held that such conduct was not a predicate act under RICO. The law is clear that there must be a proximate causal relationship between the RICO predicate acts and the plaintiff's damages. *Zervas v. Faulkner,* 861 F.2d 823 (5th Cir. 1988) and *Old Time Enterprises v. International Coffee Corp.,* 862 F.2d 1213 (5th Cir. 1989). Without some evidence that would have placed the short weighing in the category of predicate acts, the evidence should never have been admitted, and without it this court feels that the jury could not have found the failure of the business or the $700,000 compensatory damage award attributable to Richard Howard's conduct.

Conclusion

For the reasons set forth hereinabove, this court finds that the motions for judgment as a matter of law in favor of the defendants to be supported by the law and evidence, and said motions will be granted. If this court's judgment is vacated or reversed, this court feels that a new trial as to all defendants should be granted.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana on this 2nd day of December, 1992.

s/ James T. Trimble, Jr.
JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE

Appendix A

COPY SENT
DATE 12-3-92
BY cag
TO: Trascher
Frank
Ward
Hannah
Hoychick
Howard

APPENDIX B — JUDGMENT ON POST-TRIAL MOTIONS FILED DECEMBER 2, 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CIVIL ACTION NO. 89-0953
JUDGE TRIMBLE

TOMMY H. CONDREY

VERSUS

RICHARD K. HOWARD, JR. ET AL

JUDGMENT ON POST TRIAL MOTIONS

For the reasons set forth in the ruling rendered this date,

IT IS ORDERED, ADJUDGED AND DECREED that the motions for judgment as a matter of law filed on behalf of defendants Richard Howard, Louisiana Fiber Corporation, and Howard Gin, Inc. be and same are hereby granted, and the jury verdict herein is hereby set aside and vacated, and judgment is hereby rendered in favor of Richard Howard, Louisiana Fiber Corporation, and Howard Gin, Inc., dismissing the demands of plaintiff, Tommy M. Condrey, at his cost.

JUDGMENT RENDERED AND SIGNED in Chambers at Lake Charles, Louisiana this 2nd day of December, 1992.

Appendix B

s/ James T. Trimble, Jr.
JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE

COPY SENT
Judgment Entered 12-3-92
By Celia Anne Gallagher
Copy To: Jumonville
Trascher
Ward
Hannah
Baldwin
Frank
Hoychick
Howard